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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (NC)

**DECLARATION OF SARA E. JENKINS
IN SUPPORT OF ARISTA'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN ARISTA'S
MOTIONS *IN LIMINE* NOS. 1–5 (Dkt. 522)**

DECLARATION OF SARA E. JENKINS

I, Sara E. Jenkins, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Arista Networks Inc.’s (“Arista”) Administrative Motion to Under Seal Confidential Information in connection with Arista’s Motions *in Limine* Nos. 1-5. Dkt. 522. I make this declaration in accordance with Civil Local Rule 79-5(e)(1) on behalf of Cisco to confirm that the information contained in the documents referenced in the Sealing Motion should be sealed.

3. As motions *in limine*, Arista’s motions are non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, that the document is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Pursuant to Civil L.R. 79-5(e), good cause exists to seal the portions of the documents set forth below, because the information sought to be sealed reflects confidential information that “give[s] [Cisco] an opportunity to obtain an advantage over competitors who do

1 not know or use it.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting
2 *Restatement of Torts* § 757, cmt b).

3 **5.** The highlighted portions of text on page 1 at lines 22-23 and page 4 at lines 3-12 of
4 Arista’s Motion *in Limine* No. 5 contains or refers to information that was designated by Cisco as
5 “Highly Confidential – Attorneys’ Eyes Only” under the protective order in this matter. These
6 portions of Arista’s brief contain Cisco’s confidential business information regarding, *inter alia*,
7 Cisco’s competitive intelligence and related strategies. Maintaining this information as
8 confidential provides Cisco with an “opportunity to obtain an advantage over competitors” who
9 may compete with Cisco and gather information regarding the same less optimally than Cisco.
10 *Elec. Arts*, 298 F. App’x at 569. Moreover, disclosing this information to Cisco’s competitors
11 would harm Cisco’s business by, *inter alia*, allowing Cisco’s competitors to learn of Cisco’s
12 strategies. This would “harm [Cisco’s] competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,
13 435 U.S. 589, 598 (1978).

14 **6.** Exhibit C is an excerpt of Exhibit 6 to the Expert Report of Kevin Almeroth which
15 was designated as “Highly Confidential Source Code” under the protective order in this matter.
16 This exhibit contains Cisco’s confidential source code. As such, there are compelling reasons to
17 seal this document. *See Agency Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d
18 1001, 1017 (E.D. Cal. 2011) (source code is “undoubtedly a trade secret” within the sealing
19 context); *Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4,
20 2016) (documents containing “information about [a party’s] business performance, structure, and
21 finances that could be used to gain unfair business advantage against them,” are properly sealed);
22 *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug.
23 20, 2014) (compelling reasons exist to seal documents containing “highly sensitive information
24 regarding [a party’s] product architecture and development.”)

7. Exhibit D is an excerpt of Cisco's Supplemental Objections and Responses to Arista Networks, Inc.'s Interrogatory Nos. 2–10, dated May 27, 2016. The highlighted portions of this document were designated as “Highly Confidential Source Code” under the protective order in this matter. The highlighted portions of this exhibit contains Cisco's confidential source code, as well as confidential information about Cisco's technology. As such, there are compelling reasons to seal the specified portions of this document. *See Agency Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011) (source code is “undoubtedly a trade secret” within the sealing context); *Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party's] business performance, structure, and finances that could be used to gain unfair business advantage against them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing “highly sensitive information regarding [a party's] product architecture and development.”)

8. Exhibit V is an internal Cisco document that was produced by Arista in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential Business Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at 6 fn. 1, this document is deemed to have been produced in this case as “Highly Confidential – Attorneys' Eyes Only” information. Exhibit V comprises Cisco's confidential business information regarding, *inter alia*, confidential information about Cisco's product architecture and technology. As such, there are compelling reasons to seal the specified portions of this document. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party's] business performance, structure, and finances that could be used to gain unfair business advantage against them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug.

20, 2014) (compelling reasons exist to seal documents containing “highly sensitive information regarding [a party’s] product architecture and development.”)

9. Exhibit W is an internal Cisco document that was produced by Arista in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential Business Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at 6 fn. 1, this document is deemed to have been produced in this case as “Highly Confidential – Attorneys’ Eyes Only” information. This exhibit contains Cisco’s confidential business information regarding, *inter alia*, Cisco’s competitive intelligence and related strategies. Maintaining this information as confidential provides Cisco with an “opportunity to obtain an advantage over competitors” who may compete with Cisco and gather information regarding the same less optimally than Cisco. *Elec. Arts*, 298 F. App’x at 569. Moreover, disclosing this information to Cisco’s competitors would harm Cisco’s business by, *inter alia*, allowing Cisco’s competitors to learn of Cisco’s strategies. This would “harm [Cisco’s] competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

10. Exhibit X is an internal Cisco document that was produced by Arista in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential Business Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at 6 fn. 1, this document is deemed to have been produced in this case as “Highly Confidential – Attorneys’ Eyes Only” information. This exhibit contains Cisco’s confidential business information regarding, *inter alia*, Cisco’s customers, Cisco’s technology and product architecture, and Cisco’s competitive intelligence and related strategies. Maintaining this information as confidential provides Cisco with an “opportunity to obtain an advantage over competitors” who may compete with Cisco and gather information regarding the same less optimally than Cisco. *Elec. Arts*, 298 F. App’x at 569; *Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party’s] business performance, structure, and finances that could be used to gain unfair business advantage against

1 them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL
 2 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing
 3 “highly sensitive information regarding [a party’s] product architecture and development.”)
 4 Moreover, disclosing this information to Cisco’s competitors would harm Cisco’s business by,
 5 *inter alia*, allowing Cisco’s competitors to learn of Cisco’s strategies. This would “harm [Cisco’s]
 6 competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

7 **11.** Exhibit Y is an excerpt from the deposition transcript of Drew Pletcher, taken on
 8 May 26, 2016. This deposition transcript was designated by Cisco as “Highly Confidential –
 9 Attorneys’ Eyes Only” under the protective order in this matter. Pages 90-97 and 326 of this
 10 transcript contain confidential information about Cisco’s customers, Cisco’s business
 11 development, Cisco’s competitive intelligence, and strategies related to the same. Maintaining
 12 this information as confidential provides Cisco with an “opportunity to obtain an advantage over
 13 competitors” who may compete with Cisco and gather information regarding the same less
 14 optimally than Cisco. *Elec. Arts*, 298 F. App’x at 569. Moreover, disclosing this information to
 15 Cisco’s competitors would harm Cisco’s business by, *inter alia*, allowing Cisco’s competitors to
 16 learn of Cisco’s strategies. This would “harm [Cisco’s] competitive standing.” *Nixon v. Warner*
 17 *Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

18 **12.** Exhibit Z is an excerpt from the deposition transcript of Deepak Malik, taken on
 19 May 19, 2016. This deposition transcript was designated by Cisco as “Highly Confidential –
 20 Attorneys’ Eyes Only” under the protective order in this matter. Pages 189-196 of this transcript
 21 contain confidential information about Cisco’s customers, Cisco’s business development, Cisco’s
 22 competitive intelligence, and strategies related to the same. Maintaining this information as
 23 confidential provides Cisco with an “opportunity to obtain an advantage over competitors” who
 24 may compete with Cisco and gather information regarding the same less optimally than Cisco.
 25 *Elec. Arts*, 298 F. App’x at 569. Moreover, disclosing this information to Cisco’s competitors
 26 would harm Cisco’s business by, *inter alia*, allowing Cisco’s competitors to learn of Cisco’s

strategies. This would “harm [Cisco’s] competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

13. Cisco does not seek to seal Exhibit A to the Declaration of Ryan Wong in support of Arista's Motions *in Limine*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Redwood Shores, California, on September 20, 2016.

/s/ Sara E. Jenkins

Sara E. Jenkins